

मामला क्रमांक ...C.S.A.:111/02-सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> <u>Hon'ble Shri Justice L.C. Bhadoo &</u> <u>Hon'ble Shri Justice Dharendra Mishra.</u> CRIMINAL APPEAL No. 111/2002. <u>APPELLANT</u> : <u>Versus</u> <u>RESPONDENT</u> : Shri Prafulla Bharat Advocate for the accused/appellant. Shri D.K. Gwalare Additional Public Prosecutor for respondent/ State. <u>(ORAL) JUDGMENT</u> <u>{Dated 29-3-2007}</u> <u>L.C. Bhadoo.J</u> The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 22.08.2000 passed by Additional Sessions Judge, Ambikapur, in Sessions trial No. 307/1999 whereby he has been held guilty under section 302 of the Indian Penal Code for committing the murder of his brother – Prem, and sentenced to undergo imprisonment for life and pay fine	Kundanlal @ Kutku S/o Fitku Uraon Aged about 30 years, R/o Village Dharmapur, P.S. Sitapur District Sarguja, CG. State of M.P. (Now CG)

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	of Rs. 6000/-, in default of payment of fine to further undergo RI for four months. Case of the prosecution, in brief, is that on 20.7.1999 at about 8 p.m., when deceased – Prem was at his residence, accused came, attacked him with axe on the right side of his neck near the temporal region and thereafter he went to his father Fitku PW-5, informed him that he has attacked Prem, asked him to go and see whether he is dead or alive. Crime was witnessed by PW-4 Budhibai, the wife of the deceased. She informed the village Sarpanch Debarram and Kotwar Sainath Chikwa and on their inquiry, the accused confessed that he has attacked his brother Prem with axe. Thereafter, Sarpanch and the Kotwar of the village took the accused to the police station, matter was reported by PW-1 Milan, the son of the deceased, based on that, FIR Ex. P-2 was registered by the Station House Office of Police Station Sitapur. After giving notice Ex. P-3 to the Panchas, prepared inquest report Ex. P-4 on the dead body of Prem, site plan Ex. P-5 was also prepared. Thereafter, dead body was sent for post mortem examination to Government Hospital, Sitapur under Ex. P-9 where Dr. K.K. Datta PW-7 conducted the post mortem examination and prepared the post mortem report Ex. P-10. Accused gave memorandum Ex. P-15 and in pursuance of that an axe, the weapon of the offence was seized under Ex P-16. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Ambikapur	

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	from where learned Additional Sessions Judge, Ambikapur, received the same on transfer for trial. In order to establish the charge against the accused/appellant, the prosecution has examined 8 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution case and stated that he is innocent and has been falsely implicated in the case. We have heard counsel for both the parties and perused the material available on record. Counsel appearing on behalf of the accused/appellant has not disputed the fact that the death of Prem was homicidal in nature. Moreover, from the evidence of Budhibai PW-4, the wife of the deceased who witnessed the crime in question as also the extra judicial confession made by the accused before his father Fitku PW-5 as well as the medical evidence of Dr. K.K. Datta PW-7, it is established that the death of Prem was homicidal in nature. As far as the involvement of the accused in the crime in question is concerned, counsel for the accused/appellant argued that in paragraph 7 of cross examination of PW-4 Budhibai, she has stated that due to darkness she was not able to see what was happening between the accused and the deceased and as such, it cannot be said that she witnessed the crime in question.	

P.T.O.

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	We have perused the evidence of PW-4 Budhibai in which she has categorically stated that the house in which she used to reside was small and it had two closets (Kothri), in one closet she along with her husband and children used to reside and in the other closet her brother-in-law, the accused, used to reside. She had yet another brother-in-law namely Basant and both her brothers-in-law used to live together. On the fateful night, when she as well as her husband were sitting in their residence, accused Kundan came there and started saying that her husband had kept more land, on which her husband replied that he will give the same to the accused but accused Kundan did not stop himself at that and dragged her husband to the courtyard and attacked him on the temporal region near the right side of the ear, with axe, as a result of which he fell down and the blood started oozing out of the injury. Thus, from the evidence of PW-4 Budhibai, the wife of the deceased, her presence at the place of the incident cannot be doubted. Moreover, she has also stated in her evidence that the accused came to her house where she as well as deceased Prem were sitting, dragged Prem to the courtyard and attacked him with axe, therefore, it cannot be said that this witness did not witness the crime in question. Even if it is believed that due to darkness this witness was not able to see as to what was happening, even then, the presence of the accused at the place of incident, his inquiry from deceased for retaining more land and bringing the axe are duly proved by the evidence of this witness. Moreover, the accused has not stated that the injury was inflicted by someone else as there was no third person when Prem sustained injury. Thereafter, accused went directly to his father	

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	PW-5 Fitku and disclosed to him that he had attacked Prem and asked him to go and see whether he is dead or alive, on which Fitku came and saw that Prem was lying dead, therefore, the above extra judicial confession made by the accused before his father establishes the involvement of the accused with the crime in question and there appears to be no reason for Fitku PW-5 - the father of the accused to falsely implicate the accused in a false case. Even PW-1 Milan, the son of the deceased, has stated in the cross examination of his evidence that the accused made extra judicial confession before him. Thus, there is ample evidence available on record for the involvement of the accused with crime in question and to that extent we do not find any illegality of infirmity in the impugned judgment of the trial Court. Counsel for the accused/appellant argued that the accused being the brother of the deceased attacked him only once as deceased was not giving land to the accused and no second attempt was made, therefore, from the above evidence it can be inferred that the accused had no intention to cause the death of Prem. It is an admitted position that the deceased was the brother of the accused and he asked the deceased why deceased was not giving him the more land, on which deceased replied that he will give it to him but the accused did not stop there, dragged him to the courtyard and attacked him with axe. When there is no evidence	

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	regarding the intention, the same can be gathered from the circumstances under which the offence was committed, nature of the weapon used in the offence, force with which the injury was caused and the part of the body on which injury was inflicted. In the present case, the accused used axe which is a deadly weapon that too on the vital part of the body i.e. right temporal region and as per the evidence of the doctor who conducted the post mortem on the body of the deceased, muscle bone and 3/4th of the spinal cord was cut and the injury was sufficient in the ordinary course of nature to cause death. Deceased died on account of cutting of spinal cord and shock. Therefore, the part of the body chosen by the accused and the force with which the injury was inflicted due to which 3/4th of the spinal cord was cut; intention of the accused to cause death of Prem is writ large. In view of above, we do not find any illegality or infirmity in the impugned judgment of the trial Court convicting and sentencing the accused as mentioned above. Accordingly, the appeal being without substance is liable to be dismissed. It is accordingly dismissed. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

P.T.O.